

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELLA HENNING, et al.,

Plaintiffs,

v.

LUXURY BRAND PARTNERS, LLC,

Defendant.

Case No. [22-cv-07011-TLT](#)

**ORDER GRANTING MOTION FOR  
FINAL APPROVAL OF CLASS  
SETTLEMENT AND GRANTING  
MOTION FOR ATTORNEYS' FEES,  
EXPENSES, AND SERVICE AWARDS**

Re: Dkt. Nos. 66, 67

On April 23, 2024, the Court granted a motion for preliminary approval of the Class Action Settlement between Plaintiffs Ella Henning and Lea Ammiano (collectively, "Plaintiffs") and Defendant Luxury Brand, LLC ("Defendant"). ECF 65. As directed by the Court's preliminary approval order, Plaintiffs, and the class members, filed their unopposed motion for final settlement approval on August 2, 2024. ECF 66. Thereafter, on August 2, 2024, Plaintiffs filed their unopposed motion for attorneys' fees, expenses, and service awards. ECF 67.

On October 18, 2024, Ryan Williams, a Project Manager at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"), submitted declaration indicating that there were no requests for exclusion and no objections to the Settlement. ECF 70.

The Court finds this matter appropriate for resolution without oral argument. *See* L. R. 7(1)(b) (authorizing courts to dispense with oral argument on any motion except where an oral hearing is required by statute). Having considered the motion briefing, the terms of the Settlement Agreement, the arguments of counsel, and the other matters on file in this action, the Court **GRANTS** the motion for final approval. The Court finds the settlement fair, adequate, and reasonable. The provisional appointments of the class representatives and class counsel are confirmed.

The Motion for Attorneys' Fees, Expenses, and Service Awards is **GRANTED**. The Court **ORDERS** that the class counsel shall be paid \$212,500.00 (25% of the Settlement Fund) in attorney's fees and \$582.25 in litigation costs, the class administrator shall be paid \$225,000.00, and the named Plaintiffs Ella Henning and Lea Ammiano shall each be paid \$2,500.00 in service awards.

## **I. BACKGROUND**

### **A. Procedural History**

On November 8, 2022, Plaintiff Ella Henning, individually and on behalf of all others similarly situated, filed a class action complaint against Defendant. ECF 1. Defendant filed a motion to dismiss which the Court granted-in-part and denied-in-part. ECF 17, 37. On June 9, 2023, Defendant filed an answer to the complaint. ECF 42. After several months of settlement discussions with mediator Howard Herman and Magistrate Judge Lisa J. Cisneros, the parties filed their notice of settlement on January 3, 2024. ECF 55.

On February 8, 2024, Plaintiffs filed a First Amended Complaint ("FAC") adding Plaintiff Ammiano as a Class Representative, re-alleging a nationwide class, and adding a proposed Florida subclass. ECF 58. The amended complaint alleged the following causes of action: (1) state consumer fraud acts; (2) false advertising law, Bus. & Prof. Code, § 17500; (3) Unfair Competition Law, Bus. & Prof. Code, § 17200; (4) Consumer Legal Remedies Act, Civ. Code, § 1770; (5) Florida Deceptive and Unfair Trade Practices Act, § 501.201, et seq.; and (6) in the alternative, Unjust Enrichment. *See id.* ¶¶ 119-190. Plaintiffs filed their motion for preliminary approval of class action settlement. ECF 59. The parties reached a settlement prior to class certification with the assistance of an experienced mediator Howard Herman. The Settlement Agreement defines the class as:

All persons in the United States, who, during the Class Period, purchased one or more of the IGK Products for personal, family, or household use and not for resale. Excluded from the Settlement Class are (a) all persons who are employees, directors, officers, and agents of [Luxury Brand Partners], or its subsidiaries and affiliated companies; (b) persons or entities who purchased the IGK Products primarily for the purposes of resale to consumers or other resellers; (c) governmental entities; and (d) the Court, the Court's immediate family, and Court staff. ("the Settlement Class"). ECF 59-1.

On April 23, 2024, the Court granted the motion for preliminary approval. ECF 65. Subsequently, Plaintiffs filed their unopposed motion for final settlement approval on August 2,

2024. ECF 66. Thereafter, on August 2, 2024, Plaintiffs filed their unopposed motion for attorney's fees, expenses, and service awards. ECF 67.

## **B. Terms of the Settlement Agreement**

### **1. Attorneys' Fees and Costs**

Under the terms of the Settlement Agreement, defendant will pay \$850,000 into a common settlement fund, without admitting liability. This amount includes attorneys' fees and costs, the cost of class notice and settlement administration, and the class representatives' service awards.

### **2. Class Relief**

After deductions from the common fund for fees, costs, and service incentive awards, approximately \$406,917.75 will remain to be distributed among the participating class members. Class members will be reimbursed for the IGK products for which they submit proof of purchase, or without proof of purchase and attestation under oath, \$4 per product for a maximum of \$20. There are potentially tens of thousands of eligible class members, and the target audience for the media campaign is 6,914,000 individuals, not all of whom are expected to be class members given the method of notice. Decl. Proposed Class Counsel, ECF 59-1, ¶ 13, at 4; Decl. Weisbrot, ECF 59-2, ¶¶ 24–25, at 8. The Agreement provides that no amount will revert to defendant. The Agreement does not provide for injunctive relief.

### **3. Cy Pres/Remainder**

The Settlement Agreement provides that when cash payments to participating class members are not deliverable or executed 180 days after provision, any remaining funds will be distributed on a pro rata basis to class members who submitted valid claims or will be paid to the *cy pres* recipient, Public Counsel. Settlement Counsel provided the Court with a declaration indicating that no member of either firm is on the board of Public Counsel and that there is no actual conflict or appearance of conflict between the parties and the chosen *cy pres*. See ECF 66-2.

## **C. Class Notice and Claims Administration**

The Settlement Agreement is being administered by Angeion. Following the Court's preliminary approval and conditional certification of the settlement, on June 3, 2024, Angeion commenced the media notice portion of the Notice Program comprised of programmatic display

1 advertising, social media advertising via Facebook, Instagram, and X, and a paid search campaign via  
2 Google. The media notice delivered an approximate 75.01 percent reach with an average frequency of  
3 6.86 times, by serving a total of 34,660,130 impressions.

4 The Class Administrator also established a settlement website (the “Settlement Website”) at  
5 www.IGKDryShampooSettlement.com, including the settlement notices, the procedures for class  
6 members to submit claims or exclude themselves, a contact information page that includes address  
7 and telephone numbers for the claim administrator and the parties, the Settlement Agreement, the  
8 signed order of preliminary approval, claim form, and opt-out form. In addition, the motion for final  
9 approval and the application for attorneys’ fees, costs, and incentive awards were uploaded to the  
10 website after they were filed. Through October 17, 2024, the Settlement Website has had 133,598  
11 unique visitors and 215,216 page views. The Class Administrator also operated a toll-free number for  
12 class member inquiries. Through October 17, 2024, the toll-free telephone line has received 39  
13 inbound calls and 9 voicemail transcriptions.

14 Class members were given until September 6, 2024, to object to or exclude themselves from  
15 the Settlement Agreement. Angeion has neither received nor been made aware of any objections or  
16 requests for exclusion to the Settlement.

17 The deadline for Settlement Class members to submit a Claim Form is November 19, 2024.  
18 As of October 17, 2024, Angeion has received a total of 89,733 Claim Form submissions (89,469  
19 online submissions and 264 submissions by mail).

## 20 **II. FINAL APPROVAL OF SETTLEMENT**

### 21 **A. Legal Standard**

22 A court may approve a proposed class action settlement of a certified class only “after a hearing  
23 and on finding that it is fair, reasonable, and adequate,” and that it meets the requirements for class  
24 certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not address  
25 whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of  
26 collusion, and consistent with plaintiff’s fiduciary obligations to the class. *See Hanlon v. Chrysler*  
27 *Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to assessing a  
28 settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely

duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

Settlements that occur before formal class certification also “require a higher standard of fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, a court also must ensure that “the settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

## **B. Analysis**

### **1. The Settlement Class Meets the Prerequisites for Certification**

As the Court found in its order granting preliminary approval and conditional certification of the settlement class herein, the prerequisites of Rule 23 have been satisfied purposes of certification of the Settlement Class. ECF 65.

### **2. Adequacy of Notice**

A court must “direct notice [of a proposed class settlement] in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

1 The Court found the parties' proposed notice procedures provided the best notice practicable  
2 and reasonably calculated to apprise Class members of the settlement and their rights to object or  
3 exclude themselves. ECF 65. Pursuant to those procedures, the Class Administrator commenced the  
4 media notice portion of the Notice Program comprised of programmatic display advertising, social  
5 media advertising via Facebook, Instagram, and X, and a paid search campaign via Google. The Class  
6 Administrator also established a settlement website and operated a toll-free number. The Class  
7 Administrator reports that the media notice delivered an approximate 75.01 percent reach with an  
8 average frequency of 6.86 times, by serving a total of 34,660,130 impressions.

9 Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate  
10 notice.

### 11 **3. The Settlement is Fair and Reasonable**

12 As the Court previously found in its order granting preliminary approval, the *Hanlon* factors  
13 indicate the settlement here is fair and reasonable and treats class members equitably relative to one  
14 another. ECF 65.

15 The reaction of the class was overwhelmingly positive. The Court received 0 objections and  
16 0 opt-outs as of the September 6, 2024 deadline. "[T]he absence of a large number of objections to  
17 a proposed class action settlement raises a strong presumption that the terms of a proposed class  
18 settlement action are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d  
19 1036, 1043 (N.D. Cal. 2008) (citation omitted); *see also Churchill Vill.*, 361 F.3d at 577 (holding  
20 that approval of a settlement that received 45 objections (0.05%) and 500 opt-outs (0.56%) out of  
21 90,000 class members was proper).

22 In its preliminary approval order, the Court approved the proposed plan of allocation. ECF  
23 65. That plan is: Class members will be reimbursed for the IGK products for which they submit  
24 proof of purchase, or without proof of purchase and attestation under oath, \$4 per product for a  
25 maximum of \$20. The Court finds the plan of allocation to be fair and reasonable and to treat class  
26 members equitably and therefore approves that plan of allocation.

### 27 **4. Objections**

28 There were no objections filed to the Settlement or any portions thereof. ECF 70.

## 5. Other Findings

On February 16, 2024, pursuant to 28 U.S.C. § 1715, on behalf of the Defendant, Angeion sent notice regarding the Settlement to be sent to the Attorneys General of all states and territories, as well as the Attorney General of the United States (“CAFA Notice”). ECF 66-1, Exhibit A. Notice occurred more than 90 days before the date of this order, as required by 28 U.S.C. § 1715(d).

## 6. Certification Is Granted and the Settlement is Approved

After reviewing all the required factors, the Court finds the Settlement Agreement to be fair, reasonable, and adequate, and certification of the Settlement Class as defined therein to be proper. The following persons are excluded from the Settlement Class: (a) all persons who are employees, directors, officers, and agents of Luxury Brand Partners, or its subsidiaries and affiliated companies; (b) persons or entities who purchased the IGK Products primarily for the purposes of resale to consumers or other resellers; (c) governmental entities; and (d) the Court, the Court’s immediate family, and Court staff. ECF 59-1. No persons filed request for exclusion from the Settlement Class.

Additionally, the *cy pres* recipient, Public Counsel, is **APPROVED**.

## III. MOTION FOR ATTORNEY’S FEES, EXPENSES, AND SERVICE AWARDS

### A. Attorney’s Fees

Attorneys’ fees and costs may be awarded in a certified class action under Federal Rule of Civil Procedure 23(h). Such fees must be found “fair, reasonable, and adequate” in order to be approved. Fed. R. Civ. P. 23(e); *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). To “avoid abdicating its responsibility to review the agreement for the protection of the class, a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement.” *Id.* at 963. “[T]he members of the class retain an interest in assuring that the fees to be paid class counsel are not unreasonably high,” since unreasonably high fees are a likely indicator that the class has obtained less monetary or injunctive relief than they might otherwise. *Id.* at 964.

Class counsel requests an attorneys’ fee award of \$212,500.00. Based on the detailed time records submitted by counsel, the attorneys’ fees sought amount to approximately 69% of its lodestar. Defendants do not oppose the fee request.



The Court analyzes an attorneys' fee request based on either the "lodestar" method or a percentage of the total settlement fund made available to the class, including costs, fees, and injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth Circuit encourages courts to use another method as a cross-check to avoid a "mechanical or formulaic approach that results in an unreasonable reward." *In re Bluetooth*, 654 F.3d at 944–45 (citing *Vizcaino*, 290 F.3d at 1050–51.)

Under the lodestar approach, a court multiplies the number of hours reasonably expended by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A] court calculates the lodestar figure by multiplying the number of hours reasonably expended on a case by a reasonable hourly rate. A reasonable hourly rate is ordinarily the 'prevailing market rate [] in the relevant community.'"). Under the percentage-of-the-fund method, courts in the Ninth Circuit "typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *In re Bluetooth*, 654 F.3d at 942 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). The benchmark should be adjusted when the percentage recovery would be "either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers*, 904 F.2d at 1311. When using the percentage-of-recovery method, courts consider a number of factors, including whether class counsel " 'achieved exceptional results for the class,' whether the case was risky for class counsel, whether counsel's performance 'generated benefits beyond the cash settlement fund,' the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954–55 (9th Cir. 2015) (quoting *Vizcaino*, 290 F.3d at 1047–50. "[T]he most critical factor [in determining appropriate attorney's fee awards] is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Using the percentage of recovery method, the Court finds the attorneys' fees sought to be reasonable. The Court has also considered a cross-check using the lodestar method. As of August 1, 2024, the lodestar figure is 514.20 hours at \$595.94 per hour for a total of \$306,433.40. Plaintiffs



claim hourly rates that are commensurate with their experience and with the legal market in this district.

Applying the percentage of recovery method, the parties determined the total settlement value to be \$850,000. The attorneys' fees requested would come to 25% of this total. This amount is equal to the 25% benchmark in the Ninth Circuit. On November 8, 2022, Plaintiff filed a class action complaint. ECF 1. Plaintiff defended against a motion to dismiss which the Court granted-in-part and denied-in-part. ECF 17, 37. After several months of settlement discussions, the parties filed their notice of settlement on January 3, 2024. ECF 55. Thereafter, all efforts were focused on the details of the settlement. On February 8, 2024, Plaintiffs filed a FAC adding Plaintiff Ammiano as a Class Representative, re-alleging a nationwide class, and adding a proposed Florida subclass. ECF 58. The Plaintiff filed a Motion for Settlement and Preliminary Approval on February 9, 2024. ECF 59. Given the history of this action, the Court finds that the requested attorneys' fees of 25% of the total settlement value is reasonable.

Based on the foregoing, the Court **GRANTS** an award of attorneys' fees to the amount of \$212,500.00.

#### **B. Expenses Award**

Class counsel is entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters). Costs compensable under Rule 23(h) include "nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, class counsel seeks reimbursement for litigation expenses, and provides records documenting those expenses, in the amount of \$582.25. The Court finds this amount reasonable, fair, and adequate.

#### **C. Service Award**

The district court must evaluate named plaintiff's requested award using relevant factors including "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation." *Staton*, 327 F.3d at 977. "Such awards are discretionary . . .

1 and are intended to compensate class representatives for work done on behalf of the class, to make  
2 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize  
3 their willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d  
4 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that district courts must  
5 “scrutiniz[e] all incentive awards to determine whether they destroy the adequacy of the class  
6 representatives.” *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013).

7 Here, Plaintiffs requests incentive awards of \$2,500 each. The Court finds the incentive  
8 awards to be appropriate. Plaintiff came forward to represent the interests of others. Plaintiffs have  
9 devoted substantial time to the litigation of their claims against Defendants. They provided  
10 information to Class Counsel, reviewed pleadings, and reviewed and approved the Settlement.  
11 Plaintiffs were willing to sit for a deposition and to perform duties as the Court may have required  
12 if the Action continued. Because the laws are not self-enforcing, it is appropriate to give incentives  
13 to those who come forward with little to gain and at personal risk and who work to achieve a  
14 settlement that confers substantial benefits on others. Thus, the Court approves the requested  
15 incentive award payment for Plaintiffs Ella Henning and Lea Ammiano.

#### 16 **IV. CONCLUSION**

17 Based upon the foregoing, the motion for final approval of class settlement is **GRANTED**.  
18 The motion for attorneys’ fees, costs, and service awards is **GRANTED**. Amounts are fair and  
19 reasonable. Settlement was reached with the assistance of mediator Howard Herman and Magistrate  
20 Judge Lisa J. Cisneros. Class Counsel is awarded **\$212,500.00** in attorneys’ fees and **\$582.25** in  
21 litigation costs. Angeion Group, LLC is awarded **\$225,000.00** in settlement administration costs.  
22 Plaintiffs Ella Henning and Lea Ammiano are granted incentive awards of **\$2,500.00** each.

23 Without affecting the finality of this order in any way, the Court retains jurisdiction of all  
24 matters relating to the interpretation, administration, implementation, effectuation and enforcement of  
25 this order and the Settlement.

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that final judgment is  
27 **ENTERED** in accordance with the terms of the Settlement, the Order Granting Preliminary Approval  
28 of Class Action Settlement filed on February 8, 2024 (ECF 59), and this order. This document will

1 constitute a final judgment (and a separate document constituting the judgment) for purposes of Rule  
2 58, Federal Rules of Civil Procedure.

3 The hearing scheduled for November 19, 2024 is hereby **VACATED**.

4 The proposed order is hereby adopted, except as modified herein. ECF 69.


5 The parties shall file a post-distribution accounting in accordance with this District's  
6 Procedural Guidance for Class Action Settlements no later than **April 17, 2025**, at 3:00 p.m. via video  
7 conference.

8 The Court **SETS** a compliance deadline on **July 17, 2025**, on the Court's 2:00 p.m. calendar  
9 via video conference to verify timely filing of the post-distribution accounting.

10 This Order resolves ECF 66 and 67.

11 **IT IS SO ORDERED.**

12 Dated: November 13, 2024

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14 TRINA L. THOMPSON  
15 United States District Judge  
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